

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER MICHAEL NEWSOME,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	03-3182
	:	
POLICE OFFICER ROBERT WHITAKER,	:	
BADGE #214 AND POLICE OFFICER	:	
JENNIFER JONES,	:	
Defendants	:	

MEMORANDUM OPINION AND ORDER

J. RUFE

March 4, 2005

Before the Court is Defendants' Motion for Summary Judgment on Counts I and III of Plaintiff's Complaint. For the following reasons, Defendants' Motion is Granted.

I. Factual Background

On May 17, 2002, Chester Police Officers Robert Whitaker and Jennifer Jones ("the Officers") arrived at Vanita Stevenson's apartment in response to a "911" emergency call about a domestic incident.¹ The Officers noticed that the front door of the apartment was damaged,² and when they entered the apartment, Ms. Stevenson told them that Plaintiff Christopher Newsome had broken into her apartment, and that she wanted him to leave.³ Plaintiff formerly had a key to her apartment and lived there for approximately four months,⁴ but he returned the key to Ms. Stevenson

¹ Newsome Dep. at 36.

² Newsome Dep. at 40-41.

³ Newsome Dep. at 38.

⁴ Newsome Dep. at 9-10.

at her request and stopped staying with her prior to May 17, 2002.⁵

Plaintiff explains that he broke in by forcing the lock because he was concerned for Ms. Stevenson's safety and well-being.⁶ He had called from a pay phone nearby and knocked on the door, but although the lights and television were on in the apartment, Ms. Stevenson did not respond.⁷ When Ms. Stevenson saw him in her house, she immediately started yelling at him for breaking in.⁸ She was still shouting at him when the Officers arrived twenty or twenty-five minutes later.⁹ After Ms. Stevenson told the Officers that Plaintiff had broken into her house and she wanted him to leave,¹⁰ Plaintiff allegedly showed the Officers his parole papers which listed Ms. Stevenson's address as his residence.¹¹ Ms. Stevenson repeated that she wanted him out of her apartment.¹² At that point, Officer Whitaker advised Plaintiff he was arresting him on the charge of burglary, placed him in handcuffs, and escorted him out of the apartment.¹³ Plaintiff was later formally charged with burglary and criminal trespass.

An altercation with the Officers followed Plaintiff's arrest, leading to additional criminal charges of felony aggravated assault on a police officer and misdemeanor charges of simple

⁵ Newsome Dep. at 29-30.

⁶ Newsome Dep. at 31.

⁷ Plaintiff also testified in his deposition that he came to Ms. Stevenson's apartment at her request. Allegedly, she had called him and asked him to bring her some money. Newsome Dep. at 30. There is no evidence that he provided this information to the Officers at the scene of the incident.

⁸ Newsome Dep. at 32-37.

⁹ Newsome Dep. at 35.

¹⁰ Newsome Dep. at 38.

¹¹ Newsome Dep. at 38-39. This is a disputed issue of fact.

¹² Newsome Dep. at 40.

¹³ Newsome Dep. at 38-40.

assault, criminal mischief, persistent disorderly conduct and resisting arrest. Ultimately, Plaintiff pled guilty to the charges of criminal mischief and persistent disorderly conduct, and the remaining charges were *nolle prosequi*.¹⁴

At his guilty plea proceeding,¹⁵ Plaintiff testified that he was offering his guilty plea because he “did the things that are stated in the Affidavit of Probable Cause.”¹⁶ However, in so stating, Plaintiff admitted only to those facts in the affidavit which relate to the two offenses to which he pled guilty.¹⁷ That is, he admitted that he continued to act disorderly after he was detained and placed in the police car, that he kicked a window out of the police car, and that he injured the Officers.¹⁸ The plea agreement was a negotiated resolution of the charges, and Plaintiff testified that he “pled guilty to two charges and the remaining charges were dropped.”¹⁹

Following his guilty plea and sentencing, Plaintiff filed a complaint in this Court asserting three counts under 42 U.S.C. § 1983: 1) false arrest; 2) excessive force used in the course of the arrest; and 3) malicious prosecution.

The Officers filed a Motion for Partial Summary Judgment (“the Motion”) on Counts I and III.²⁰ They argue that they had probable cause to arrest and prosecute Plaintiff, and that Plaintiff’s guilty plea to charges emanating from the arrest negates his claims for false arrest and

¹⁴ The burglary charge had been dismissed at the preliminary hearing for lack of probable cause.

¹⁵ The hearing was held before the Honorable Ann A. Osborne in the Court of Common Pleas of Delaware County, Pennsylvania on March 26, 2003.

¹⁶ Tr. of Guilty Plea Hearing at 13.

¹⁷ *Id.* at 12-13.

¹⁸ *See* Aff. of Probable Cause.

¹⁹ Newsome Dep. at 77-78.

²⁰ The Officers make no argument as to Count II, use of excessive force in effecting the arrest.

malicious prosecution as a matter of law.

II. Standard of Review

Under Federal Rule of Civil Procedure 56(c), the Court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”²¹ To avoid summary judgment, the non-moving party must come forth with admissible factual evidence establishing a genuine issue of material fact.²² In deciding a motion for summary judgment, the Court must construe the facts and inferences in a light most favorable to the non-moving party,²³ but need not consider unsupported assertions, speculation or conclusory allegations.²⁴ The Court must determine whether there are any genuine issues for trial.²⁵

III. Discussion

A. Count I: False arrest

In their Motion, the Officers first argue that Plaintiff’s guilty plea precludes a claim for false arrest. Because Plaintiff pled guilty only to charges related to his post-arrest altercation with the Officers and the damage he inflicted on their patrol car, but not to any charges related to

²¹ Celotex Corp. v. Catrett, 447 U.S. 317, 322 (1986).

²² Id.

²³ EEOC v. Westinghouse Elec. Corp., 725 F.2d 211, 216 (3d Cir. 1983).

²⁴ Easton v. Bristol-Meyers Squibb Co., 289 F. Supp. 2d 604, 609 (E.D. Pa. 2003)

²⁵ Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

entering Ms. Stevenson's apartment (i.e., the conduct that led to his arrest), this argument is unpersuasive.²⁶

The Officers next argue that they had probable cause to arrest Plaintiff, and that the evidence cannot reasonably support a contrary factual finding. The circumstances preceding Plaintiff's arrest resulted in charges of burglary and criminal trespass. If the Officers had probable cause to arrest Plaintiff on either charge, the arrest would be legal.²⁷

Probable cause for arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient to establish a reasonable belief that the individual has committed or is committing a criminal offense.²⁸ The question is usually one for the jury, but a court may enter summary judgment on this issue if the evidence, viewed most favorably to the plaintiff, would not reasonably support a contrary factual finding.²⁹

The two elements of felony criminal trespass for buildings and occupied structures are: 1) breaking into any building or occupied structure, or gaining entry by subterfuge; and 2) knowing one is not licensed or privileged to do so.³⁰ "Breaking into" is defined as "to gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for

²⁶ The Officers argue they charged Plaintiff with criminal mischief for breaking Ms. Stevenson's apartment door. However, the transcript of the guilty plea hearing clarifies that both Newsome and Judge Osborne believed Newsome was charged with criminal mischief for breaking a police car window after his arrest. Tr. of Guilty Plea Hearing at 9-10. Accordingly, the Court finds that Plaintiff did not plead guilty to any crimes charged for pre-arrest conduct.

²⁷ As long as the Officers had some reasonable basis to believe Plaintiff had committed a crime, the arrest is justified as being based on probable cause. Probable cause need only exist as to any offense that could be charged under the circumstances. Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994).

²⁸ Estate of Smith v. Marasco, 318 F.3d 497, 514 (3d Cir. 2003).

²⁹ Id.

³⁰ 18 Pa. Cons. Stat. Ann. § 3503.

human access.”³¹ Plaintiff admitted that Ms. Stevenson had taken his key to her apartment away from him and asked him to stay elsewhere. He acknowledged that he broke Ms. Stevenson’s lock and damaged her door in order to enter her apartment. He testified that, upon seeing him in her apartment, Ms. Stevenson immediately began shouting at him for breaking and entering. Although Plaintiff alleges that he showed his parole papers to the Officers,³² it was not unreasonable for them to believe he was not licensed to enter or remain in the apartment on the date in question, given all the circumstances before them. “Ordinarily, information supporting a conclusion that the potential defendant in a trespass case was not licensed or privileged and that he was so advised by the custodian of the property will provide sufficient evidence to constitute probable cause on the mens rea element. Moreover, this will normally be true even where the potential defendant, on being confronted by a law enforcement officer, makes a claim of entitlement to be on the premises.”³³ Even construing all facts and inferences in favor of Plaintiff, it was objectively reasonable for the Officers to believe they had probable cause to arrest him for criminal trespass, and that the arrest was legal.³⁴

The essential elements of burglary are: 1) entering a building; 2) without license or privilege to enter; and 3) with intent to commit a crime therein.³⁵ It was reasonable for the officers to believe that Plaintiff’s actions satisfied the first two elements of the crime, for the reasons set forth above. As to the third element, Officer Whitaker testified that he charged Plaintiff with burglary

³¹ Id.

³² This is a disputed issue of fact.

³³ Paff v. Kattenbach, 204 F.3d 425, 437 (3d Cir. 2000)

³⁴ At the preliminary hearing, the court found probable cause for the criminal trespass charge.

³⁵ 18 Pa. Cons. Stat. Ann. § 3502.

because he believed, based on the “911” emergency call, the damaged door, and Ms. Stevenson’s complaints, that Plaintiff forceably entered the apartment with the intent to commit an assault on Ms. Stevenson.³⁶ Whether this belief was supported by the factual circumstances is a material issue of fact. However, under the circumstances it was also reasonable for the Officers to believe that Plaintiff entered the apartment with the purpose of committing the crime of criminal trespass therein. Therefore, construing all facts and inferences in favor of Plaintiff, it was objectively reasonable for the Officers to believe they had probable cause to arrest Plaintiff for burglary, and that the arrest was legal.

B. Count III: Malicious prosecution

Plaintiff asserts a claim of malicious prosecution only against Officer Whitaker. In order to state a claim for malicious prosecution, Plaintiff must show all of the following: 1) Whitaker initiated criminal proceedings; 2) the proceedings ended in Plaintiff’s favor; 3) the proceedings were initiated without probable cause; 4) Whitaker acted maliciously or for a purpose other than bringing Plaintiff to justice; and 5) Plaintiff suffered a deprivation of liberty as a consequence of the legal proceedings.³⁷

Whitaker contends that Plaintiff entered a guilty plea on two of the counts charged, and this guilty plea precludes Plaintiff from pressing a malicious prosecution claim on the other counts. The Court finds that the guilty plea is not dispositive of this issue and turns to the elements of a malicious prosecution claim.

First, it is undisputed that Whitaker did initiate criminal proceedings against Plaintiff.

³⁶ Whitaker Dep. at 116-117.

³⁷ Estate of Smith, 318 F.3d at 521.

Second, Whitaker argues that the charges against Plaintiff were not terminated in Plaintiff's favor, but were dropped in exchange for a guilty plea agreement. Plaintiff contends that his felony charges were *nolle prosequi*, which can be a "favorable termination." For a *nolle prosequi* to be a "favorable termination," the Court must find that the charges were dismissed due to indications that the accused was actually innocent.³⁸ Instead, the evidence before the Court shows that the additional charges against Plaintiff, including the felony charges, were dropped in exchange for a guilty plea on the misdemeanor counts.³⁹ This element alone is dispositive of Plaintiff's claim for malicious prosecution.

Third, it is clear that Whitaker had probable cause or reasonably believed he had probable cause to initiate the felony proceedings against Plaintiff. In the context of malicious prosecution, probable cause means "facts and circumstances ... that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense."⁴⁰ As discussed above, Whitaker could reasonably believe that Plaintiff had committed one or more felonies when he broke into Ms. Stevenson's home, including felony criminal trespass and burglary. Additionally, Whitaker had probable cause to believe that Plaintiff committed felony aggravated assault, in addition to several misdemeanor crimes, following his arrest. An individual commits an aggravated assault if he or she attempts to cause or intentionally or knowingly causes bodily injury to a police officer

³⁸ Donahue v. Gavin, 280 F.3d 371, 383-384 (3d Cir. 2002).

³⁹ At the guilty plea hearing, Plaintiff acknowledged that the plea agreement was a "negotiated resolution" to the charges against him. Tr. of Guilty Plea Hearing at 4. And in his deposition for this case, he testified that he pled guilty to two charges, and the remaining charges were dropped. Newsome Dep. at 77-78.

⁴⁰ Camiolo v. State Farm Fire and Cas. Co., 334 F.3d 345, 363 (3d Cir. 2003).

performing his or her duties.⁴¹ Plaintiff admitted to intentionally kicking out a police car window, causing cuts and bruises on the hands and arms of Officer Whitaker,⁴² and subsequently pled guilty to criminal mischief for this conduct. He also pled guilty to engaging in persistent disorderly conduct while the Officers were attempting to detain him, and admitted that Officer Jones was injured in an altercation with Plaintiff while detaining him.⁴³ Although the felony aggravated assault, the misdemeanor assault, and the resisting arrest charges were ultimately dismissed by agreement, the Court finds that, given the circumstances, Whitaker had probable cause to believe Plaintiff committed these crimes, and therefore was justified in prosecuting Plaintiff on felony assault and misdemeanor charges.

Fourth, there is a genuine issue of material fact as to whether Whitaker acted maliciously or for a purpose other than bringing Plaintiff to justice.

And fifth, Plaintiff claims that he suffered a deprivation of liberty as a consequence of the felony charges against him. He was charged with three felonies: burglary, criminal trespass and aggravated assault. As noted above, the burglary charge was dismissed for lack of probable cause at Plaintiff's preliminary hearing, but prosecution continued on the remaining two felony charges. It is unclear from the record whether Plaintiff's pre-trial detention was a consequence of these legal proceedings or an unrelated parole violation, but for the purpose of this Motion the Court will assume that it was the consequence of the legal proceedings.

Despite genuine issues of material fact as to some elements of Plaintiff's malicious

⁴¹ 18 Pa. C.S.A. § 2702(a)(3).

⁴² Tr. of Guilty Plea Hearing at 13, admitting to facts set forth in affidavit of probable cause; see also Newsome Dep. at 49 ("I was in there choking and I couldn't breathe, so I kicked out the right side window of the police car, the right side window, and stuck my head out for fresh air.")

⁴³ Tr. of Guilty Plea Hearing at 13.

prosecution claim, there were no genuine issues of material fact on elements two and three. These elements are dispositive of the claim.

C. Qualified Immunity

On the issue of qualified immunity, the threshold question before the Court is whether, taken in the light most favorable to the party asserting injury, the facts alleged show that the Officers' conduct violated a constitutional right.⁴⁴ In this case, the implicated rights are Plaintiff's 4th and 14th Amendment rights not to be arrested and prosecuted without probable cause. If the Plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end and the Officers are entitled to immunity.⁴⁵

However, even if the Officers were mistaken in believing they had probable cause to arrest and prosecute Plaintiff, they would still be entitled to immunity on Counts I and III of the Complaint if the legal right was not clearly established.⁴⁶ To determine whether a right was clearly established, the Court must determine whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.⁴⁷ In other words, under the doctrine of qualified immunity, police officers who make *reasonable mistakes* as to what the law requires in a given situation are still immune from suit.⁴⁸ On a motion for summary judgment, "if there is no genuine issue of fact as to whether defendant acted with such a reasonable but mistaken belief, then he is

⁴⁴ Saucier v. Katz, 533 U.S. 194, 200 (2001).

⁴⁵ Bennett v. Murphy, 274 F.3d 133, 136 (3d Cir. 2001).

⁴⁶ Saucier, 533 U.S. at 201.

⁴⁷ Id. at 202.

⁴⁸ Id. at 205.

entitled to qualified immunity regardless of whether his actions are actually constitutional.”⁴⁹

If the Officers in this case mistakenly believed that they had probable cause to arrest and prosecute Plaintiff, the Officers are nevertheless entitled to immunity if their mistakes were reasonable under the factual circumstances confronting them. They would only be vulnerable to suit if: 1) their actions were illegal, *and* 2) the illegal action was the result of an unreasonable mistake. These two conditions are not satisfied here. For the reasons set forth in detail above, after construing all evidence in Plaintiff’s favor the Court finds that the Officers reasonably believed they had probable cause to arrest and prosecute Plaintiff, and therefore they are entitled to qualified immunity from suit for Counts I and III even if their belief was mistaken.

An appropriate Order follows.

⁴⁹ Hung v. Watford, No. 01-3580, 2002 WL 31689328, at *2.

**IN THE UNITED STATES DISTRICT COURT
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CHRISTOPHER MICHAEL NEWSOME,
Plaintiff

v.

POLICE OFFICER ROBERT WHITAKER,
BADGE #214 AND POLICE OFFICER
JENNIFER JONES,
Defendants

:
:
: **Civil Action**
: **No. 03-3182**
:
:
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:
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ORDER

AND NOW, this 4th day of March, 2005, having reviewed Defendants' Motion for Partial Summary Judgment [Doc. # 22], Defendants' Supplemental Motion for Partial Summary Judgment [Doc. # 29], and Plaintiff's responses thereto [Doc. # 26 and 30], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that Defendants' Motion is **GRANTED**. Counts I and III of Plaintiff's Complaint are **DISMISSED** with prejudice.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.